

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

NORTH AMERICAN ENERGY SYSTEMS, LLC,	:	
JEFFREY A. ALBANO and GREGORY	:	
HUDSON	:	
v.	:	3:01CV1230(AHN)
	:	
NEW ENGLAND ENERGY MANAGEMENT, INC.,	:	
SCOTT HINSON, MICHELLE GALLICCHIO,	:	
NORTHEAST UTILITIES SERVICE COMPANY,	:	
INC., THE CONNECTICUT LIGHT & POWER	:	
COMPANY and THE WESTERN MASSACHUSETTS	:	
ELECTRIC COMPANY	:	

RULING ON MOTION FOR LEAVE TO FILE A SUPPLEMENTAL SUBMISSION

Plaintiffs North American Energy Systems, LLC ("NAES"), Jeffrey Albano and Gregory Hudson (collectively, the "Plaintiffs") request permission of the court to supplement their previous submissions opposing the Defendants' motion to dismiss. Specifically, Plaintiffs seek to include the affidavit of Ronald A. Carrano, the President and owner of Energy Reduction Corporation. For the following reasons, the motion [doc. # 22] is DENIED.

Mr. Carrano is not a party to the current litigation. Plaintiffs wish to use his affidavit to support their claim of an antitrust injury or anti-competitive effect on the market at large. Defendants argue that the motion should be denied because the affidavit is not part of the Amended Complaint and does not set forth facts of which the court may take judicial notice. The court agrees.

"In determining the adequacy of a claim under Rule 12(b)(6), consideration is limited to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken." Allen v. Westpoint-Pepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991)(quoting Kramer v. Time Warner Inc., 937 F.2d 767, 773 (2d Cir. 1991). Furthermore, allegations made outside of the complaint are not properly before the court on a motion to dismiss. See In re Colonial Ltd. Partnership Litig., 854 F.Supp. 64, 79 (D.Conn 1994); Morgan Distributing Co., Inc. v. Unidynamic Corp., 868 F.2d 992, 995 (8th Cir.1989) ("[I]t is axiomatic that a complaint may not be amended by the briefs in opposition to a motion to dismiss"). It would be improper for the court to consider the supplemental pleading in resolving the motion to dismiss.

CONCLUSION

For the foregoing reasons, the motion for leave to file a supplemental submission [doc. # 22] is DENIED.

SO ORDERED this 9th day of September, 2002, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge